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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

RENE FRANCISCO JUAREZ,

Defendant and Appellant.

2d Crim. No. B172708
(Super. Ct. No. 1086598)
(Santa Barbara County)

Rene Francisco Juarez appeals a judgment entered after a no contest plea to two counts of forcible rape (Pen. Code, § 261, subd. (a)(2)),¹ and four counts of unlawful sexual intercourse with a minor (§ 261.5, subd. (c)). He contends that the trial court improperly entered judgment on the unlawful sexual intercourse counts because the victims were over the age of 18 at the time of the alleged offenses. We will dismiss the appeal because Juarez failed to obtain a certificate of probable cause and expressly waived his right to appeal. (§ 1237.5.)

¹ All statutory references are to the Penal Code.

FACTS AND PROCEDURAL HISTORY

In 2003, Juarez's two daughters reported to the police that he had repeatedly raped and molested them between 1994 and 1998 when they were 13 to 19 years old. Both victims were deaf mutes who communicated only by sign language and writing.

Juarez was charged with two counts of rape, and one count of anal and genital penetration by a foreign object. (§ 289, subd. (a)(1).) The complaint alleged the commission of the offenses against multiple victims (§ 667.61, subds. (b), (e)(5)), and an extension of the statute of limitations (§ 803, subd. (g)).

Later, Juarez signed a plea and waiver form stating that he would plead no contest to two counts of rape and four counts of unlawful sexual intercourse with a minor. The unlawful sexual intercourse counts were orally added to the complaint during the plea hearing and subsequently added by written amendment. In return for his plea, the prosecution agreed to a stipulated sentence of 18 years 8 months.

At the plea hearing on the same day, Juarez pleaded no contest and was sentenced as set forth in his plea agreement. Juarez acknowledged that he discussed his plea with counsel, understood the plea and sentence, and was advised of and waived his constitutional rights. The trial court stated that, as alleged, the rapes occurred between 1994 and 1999, and that the acts of unlawful sexual intercourse occurred between January 1, and June 30, 1999.

Juarez filed a timely notice of appeal challenging "the validity of the plea or admission."² The notice of appeal states that he was charged with committing sexual abuse in 1994 but the "charges were never stated, a victim was never presented, nor evidence of the case in court, the attorney never gave me any paper nor a case number; I understand that the case has at least eight years before the accusation by which is excluded by the law. . . ." Appellate counsel was appointed but did not file an amended notice of appeal or take any other action in the trial court.

² The notice of appeal also states that it is based on the denial of a motion to suppress. (See Cal. Rules of Court, rule 30(b)(4)(A).) The record shows that no suppression motion was ever made, and the matter is not argued on appeal.

DISCUSSION

Juarez contends that the trial court erred in accepting his no contest plea to the four counts of unlawful sexual intercourse with a minor because it was impossible for Juarez to have committed the offenses as charged. He argues and respondent does not dispute that, as alleged in the complaint, those offenses occurred when the victims were 18 or 19 years old and, therefore, no longer minors.

We do not reach the merits of Juarez's claim because he failed to obtain a certificate of probable cause. (§ 1237.5.) After a plea of guilty or no contest, an appeal is permitted only if the defendant fully complies with the requirements of section 1237.5 and California Rules of Court, rule 30(b). (See, e.g., *In re Chavez* (2003) 30 Cal.4th 643, 651; *People v. Jones* (1995) 33 Cal.App.4th 1087, 1091.) Except under circumstances not relevant to this case, the defendant must file a written statement with the trial court "showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings," and obtain a certificate of probable cause from the trial court. (§ 1237.5.) The notice of appeal filed by Juarez satisfies neither of these requirements. Moreover, Juarez is challenging the legality of his conviction, not his plea or sentence. Claims regarding the illegality of the judgment, whether on jurisdictional or other grounds, are precisely the types of claims that are covered by section 1237.5 and require a certificate of probable cause. (*Jones*, at p. 1092.)

We do not reach the merits of the appeal for the additional reason that Juarez expressly waived the right to appeal in his plea agreement. Such a waiver is lawful. (*People v. Panizzon* (1996) 13 Cal.4th 68, 79-80.)

Juarez concedes failure to comply with section 1237.5 and his waiver of the right to appeal. He contends, however, that a combination of trial court errors and the ineffective assistance of counsel permit this court to consider his claims on their merits. Juarez argues that the trial court lacked jurisdiction to accept his plea, and failed to find a factual basis for the plea. He further asserts that his counsel's failure to object to a conviction on the unlawful sexual intercourse counts constituted ineffective assistance. We disagree.

In his opening brief, Juarez contends that the trial court exceeded its jurisdiction by accepting his plea to offenses that he could not have committed due to the age of his daughters. We conclude that Juarez is estopped from challenging jurisdiction on appeal.

When a defendant pleads guilty or no contest in return for a specified sentence, appellate courts will not find error even if the trial court acts in excess of such jurisdiction. "The rationale behind this policy is that defendants who have received the benefit of their bargain should not be allowed to trifle with the courts by attempting to better the bargain through the appellate process." (*People v. Hester* (2000) 22 Cal.4th 290, 295; *People v. Ellis* (1987) 195 Cal.App.3d 334, 342-343, 347.)

In his reply brief, Juarez concedes the estoppel, but argues that the trial court lacked fundamental subject matter jurisdiction and did not act merely in excess of jurisdiction. As he asserts, jurisdiction for an act in excess of the court's authority may be conferred through consent or estoppel, but a defendant cannot consent to fundamental jurisdiction. (*People v. Ellis, supra*, 195 Cal.App.3d at p. 343; see also *People v. Williams* (1999) 77 Cal.App.4th 436, 447.)

The distinction between the absence of fundamental jurisdiction and an act in excess of jurisdiction is well established. A court without fundamental subject matter jurisdiction lacks the power to hear or determine the case. (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 288.) But, a court that acts contrary to statutory authority or procedural prerequisites acts in excess of its jurisdiction. (*Ibid.*; *People v. Superior Court (Marks)* (1991) 1 Cal.4th 56, 66.)

There can be no dispute that the trial court has fundamental jurisdiction to hear and decide a case charging a criminal offense. (*In re Harris* (1993) 5 Cal.4th 813, 837.) By claiming that the court accepted his plea in violation of the applicable statute, Juarez is challenging the manner in which the court exercised its fundamental jurisdiction. (*People v. Ellis, supra*, 195 Cal.App.3d at pp. 343-344; see *Cowan v. Superior Court* (1996) 14 Cal.4th 367, 374 [court does not lack fundamental subject matter jurisdiction to accept guilty plea to a time-barred offense].) In *People v. Jerome*

(1984) 160 Cal.App.3d 1087, 1094, although it was legally impossible for defendant to commit oral copulation with a person under 14 years of age when the victim was 15 years old, the trial court merely exceeded its jurisdiction by accepting a plea to the offense.

Even if we were to treat the appeal as a petition for a writ of habeas corpus, the result would be the same. Consent to a plea bargain generally precludes relief by collateral attack as well as by direct appeal. (*People v. Ellis, supra*, 195 Cal.App.3d at pp. 342-343.) The record shows that Juarez's plea was based on his repeated sexual assaults during a period from 1994 through 1999. There is no indication that a misunderstanding of the law or the facts influenced Juarez's plea bargain. Even if there was a factual error in the amended complaint concerning the dates of the offenses, the record shows that Juarez was aware of the offenses, the allegations of the amended complaint, and the facts described in the police report including the broader time period for his sexual assaults. (Cf. *People v. West* (1970) 3 Cal.3d 595, 612-613.)

It is important to insure that a defendant receives the punishment the Legislature intended to impose for his or her particular criminal acts. (*People v. Ellis, supra*, 195 Cal.App.3d at p. 345.) But, there is also a strong public interest in preventing defendants who enter into plea bargains from unfairly manipulating the system. (*Ibid.*) In this case, Juarez freely admitted several felony offenses in exchange for a stipulated sentence below the maximum for those offenses as well as the prosecution's agreement not to prosecute additional offenses that may have been supported by the facts.

We also reject Juarez's contention that his counsel provided ineffective assistance by negotiating a plea to offenses he could not have committed. To prevail on an ineffective assistance claim, the appellant must establish deficient performance and prejudice. (*Strickland v. Washington* (1984) 466 U.S. 668, 690, 694; *People v. Bolin* (1998) 18 Cal.4th 297, 333.) We will not question tactical decisions and, in this case, nothing in the record supports the assertion that Juarez's counsel provided ineffective assistance. Counsel negotiated a plea bargain in a case involving numerous and abhorrent sexual assaults by a father upon his own daughters that could have resulted in a longer prison sentence if the case had gone to trial.

Juarez also contends that the trial court failed to determine that there was a factual basis for his plea, and if it had done so, it would have realized Juarez could not have committed the offenses as alleged. When the court accepts a plea of guilty or no contest, the court must "satisfy itself . . . that there is a factual basis for the plea." (§ 1192.5.) "[T]he trial court must garner information regarding the factual basis either from the defendant or defense counsel. . . . If the trial court inquires of defense counsel regarding the factual basis, counsel may stipulate to a particular document that provides an adequate factual basis, such as a complaint, police report, preliminary hearing transcript, probation report, grand jury transcript, or written plea agreement." (*People v. Holmes* (2004) 32 Cal.4th 432, 442.) Here, the trial court satisfied the requirements of section 1192.5 and *Holmes* by finding a factual basis for the plea based on references to the police report and a stipulation by counsel.

DISPOSITION

When a defendant fails to satisfy the requirements of section 1237.5, the proper disposition is dismissal. (*People v. Jones, supra*, 33 Cal.App.4th at p. 1094; *People v. Grey* (1990) 225 Cal.App.3d 1336, 1339, disapproved on other grounds in *In re Jordan* (1992) 4 Cal.4th 116, 130, fn. 8.) Accordingly, we dismiss the appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P.J.

COFFEE, J.

Timothy J. Staffel, Judge
Superior Court County of Santa Barbara

Raymond L. Girard, under appointment by the Court of Appeal, for
Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Victoria B.
Wilson, Supervising Deputy Attorney General, Allison H. Chung, Deputy Attorney
General, for Plaintiff and Respondent.